Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

RAJESHWAR SINGH AND ROOPA YADAV--PETITIONERS

VS.

WEST WINDSOR TOWNSHIP--RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RAJESHWAR SINGH YADAV
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16 pp

QUESTIONS

1.What does "Due Process" mean, what is the standard?

2.What should the American People (not Judges and Lawyers) think of due process? Must one be a member of the bar in order to be afforded due process by the bench?

3.What is the standard of "Equal Protection" and "Justice?"

4.Whether "Non-Whites" must accept injustice as inevitable fact of life?

5.What is the constitutional standard for freedom and liberty for the people who do not belong to the privileged class?

6.Whether a district court's failure to control discovery process, to instruct the parties to timely provide discoverable information, allowing one party to withhold discoverable information, not allowing other party to depose the prospective witnesses and disposing of complaint on a summery motion are harmless errors under legal standard of conduct necessary under Amend. XIV, Sect. 1; Bill of Rights; Title 42 Sections 1981, 1982, 1983; Amend. IV, & XIII.

7. Whether the Framers of the Constitution granted Police Power to target an individual, under legal standard of conduct necessary under Amendment XIV?

8.Whether the bombardment of only one individual with twenty-nine summonses for the same offence, under color of law, in the two hundred years history of a town, is cruel and unusual punishment?

9.Whether the Court of Appeals for the Third Circuit erred in railroading a pro-se's appeal by totally disregarding the facts and whether the rubber-stamping of the District Court's decision is offensive to a "sense of fairness and justice?"

10.Whether the proceedings fell so far short of conforming to fundamental standards of procedure that it warrants constitutional condemnation in terms of lack of due process.

11.Whether the oppressive actions of the township under color of law are inexcusable attacks on human dignity and must be rejected?

12. Whether the inferior courts enforced the constitution that provides freedom, liberty, and equality for all in dignity and fairness.

13. Whether the rights of the poor and the disadvantaged (pro-se) without the backing of political and privileged class power must be subordinated?

14. Whether the efforts of pro-se to remedy serious injustices or enjoin arbitrary and unlawful government actions must fail because the courts decided not to make a full and independent review in order to determine whether the pro-se had been afforded the protections guaranteed by the United States Constitution?

15.Whether denial of depositions is unconstitutional abridgment of Plaintiffs' rights to support and prove the contentions in the complaint?

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

The United States Court of Appeals for the Third Circuit affirmed the decision of the Untied States District Court for the District of New Jersey. The order was entered on September 30, 1997. The Court of Appeals for the Third Circuit did not issue any opinion on this case. The opinion of the U.S. District Court was not for publication by the order of the court.

JURISDICTION

The order of judgment of the United States Court of Appeals for the Third Circuit was entered on September 30, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional and statutory provisions involved in this case are Amendment 14, Section 1; Bill of Rights; Title 42, § 1983; Title 42, § 1981; Thirteenth Amendment; Fourth Amendment.

CONCISE STATEMENT OF THE CASE

On Feb. 24, 1995 the complaint was filed in the U.S. District Court for the District of New Jersey. The West Windsor Township, the Defendant, singled out the Plaintiffs to repeatedly prosecute by issuing twenty-nine summonses. The Defendant knowingly and deliberately violated civil rights of the Plaintiffs. The race, color and national origin of the Plaintiffs was the prime reason for the Defendant in issuing twenty-nine summonses for the same offence. The Defendant illegally searched Plaintiffs' property and harassed the Plaintiffs and the family because of the color, race and national origin. The Defendant enforced Municipal Ordinances inequitably, unfairly, and discriminatorily on Plaintiffs because of their color, national origin and race. In the two hundred history of the West Windsor Township, no other property owner was given more

than one summons for the same offence.

On or before October 20, 1995, the Defendant had identified the files containing the discoverable information and deliberately withheld the information from the Plaintiffs in order to lapse time for discovery. After repeatedly urging the court for intervention to direct the Defendant to allow access to the files, on February 22, 1996, the Defendant stated to the court that the documents would be forwarded to the Plaintiffs. It was not done even after receiving the notice of motion for default judgement in June 1996. Instead the Defendant came with the same excuse on July 2, 1996, after more than four months of the original commitment to the court on February 22, 1996. The Defendant had identified these documents in October 1995. The Defendant intentionally and willfully neither provided the information requested in the interrogatories nor provided the copies of the documents which were in their possession all the time. The Defendant intentionally hampered the discovery.

On or about August 7, 1996, the Plaintiffs sent a notice to take depositions of the Township staff and officials. The Defendant did not allow the Plaintiffs to depose the staff and officials, and stated that the discovery period was over. The Plaintiffs brought to the attention of the court at least fourteen times that the depositions are required to complete discovery and repeatedly requested the court to allow them to depose the staff and officials of the Township. The court discarded all the requests.

The Defendant filed a motion for summary judgment to dismiss the complaint and it was granted on March 10, 1997, and the case was closed by the District Court. The Plaintiffs filed an appeal to the United States Court of Appeals for the Third Circuit. The District Court's judgment was affirmed on September 30, 1997, without any opinion. The Plaintiffs filed a petition for rehearing in banc and it was rejected.

The jurisdiction of the U.S. District Court for the District of New Jersey is based on Amendment 14, Section 1; Bill of rights; Fourteenth Amendment Rights; Title 42 § 1983; Title 42 § 1981; Thirteenth Amendment; Fourth Amendment.

CONTENTIONS AND CONCISE ARGUMENT

It is important to summarily restate facts: (1) West Windsor issued twenty-nine (29) summonses to Plaintiffs for the same offence; (2) Not even a single other property (lot) owner has been issued more than one summons for the

same offence in the two hundred history of West Windsor; (3) Plaintiffs are from India; (4) Plaintiffs' property was illegally searched several times and the Plaintiffs and Plaintiffs' family were harassed; (5) Plaintiffs were not permitted to take depositions of Defendant's staff and officers; (6) Plaintiffs repeatedly (at least fourteen (14) times) brought to the attention of the District Court that depositions are required in order to prove their claim; (7) For the Plaintiffs, to be able to rebut the Defendant's claim of no genuine issues (discrimination, etc.), the only way was to depose the Defendant's staff and officials in order to establish disparate treatment of the Plaintiffs in comparison with similarly situated property owners.

Does the "Due Process" mean that the court must be prejudiced for the Defendant and that is the standard to be applied in this instance case? The District Court's decision not to permit the Plaintiffs to depose the Defendant greatly prejudiced Plaintiffs despite diligently pursuing discovery. Without depositions Plaintiffs have been unable to procure the information necessary to enable Plaintiffs to prove claims against Defendant. Although on the surface it appears that ample time for discovery was allowed, however, the Defendant maliciously lapsed scheduled discovery time by delaying the coping of the documents for almost a year and rejected the Plaintiffs' request for depositions on grounds that it was untimely.

Does "procedural due process" for discovery mean hampering, obstructing discovery of one party and not permitting one party to take depositions, as has been established by the District Court of New Jersey or see Leumi Financial Corp. v. Hartford Acc. & Indem. Co., D.C.N.Y. 1961, 295 F. Supp 539; Grinnell Corp. v. Hackett, D.C.R.I. 1976, 70 F.R.D. 326; Jackson v. Kroblin Refrigerated Xpress Inc. D.C.W.Va. 1970, 49 F.R.D. 134; Burke v. Fire Underwriters Ass'n, D.C.Mo. 1958, 21 F.R.D. 583; U.S. v. 50.34 Acres of Land, more or less, in Village of East Hills, Nassu County N.Y., D.C.N.Y. 1952, 13F.R.D. 19; RCA MFG. Co. v. Decca records, D.C.N.Y. 1940, 1 F.R.D. 433; Fox v. House, D.C. Okl. 1939, 29 F.Supp. 673; Pineer Hibred Intern. Inc. v. Holden's Foundation Seeds, Inc., D.C.Ind. 1985, 105 F.R.D. 76; Compagine Francaise d'Assurance Pourle Commerce Exterieur v. Phillips Petroleum Co., D.C.N.Y. 1984, 105 F.R.D. 16; Bocchino v. Witkowski, D.C.MICH. 1966, 41 F.R.D. 535; Tiedman v. America Pigmant Corp. C.A.Va. 1958, 253 F.2d 803; Comerciao E. Industria Continental, S.A. v. Dresser Industries, Inc. D.C.N.Y. 1956, 19 F.R.D. 513; Smith v. Piper Aircraft Corp.

D.C. Pa 1955, 18 F.R.D. 169; Jackson v. Kroblin Refrigerated Xpress Inc. D.C.W.Va. 1970, 49 F.R.D. 134; Muzark Corp. v. Muse-Art Corp., D.C.Pa 1954, 16 F.R.D. 172; Financial Bldg. Consulltants, Inc. v. American Druggists Ins. Co., D.C.Ga. 1981, 91 F.R.D. 59; Rozier v. Ford Motor Co. C.A.Ga. 1978, 573 F.2d 1332; Kerr v. U.S. Dist. Court for Northern Dist. Of California, C.A. Cal. 1975, 511 F.2d 192; Avianca, Inc. v. Corriea, D.D.C. 1989, 705 F.Supp. 666; Reliance Ins. Co. v. Barron's D.C.N.Y. 1977, 428 F. Supp. 200; Wanderer v. Johnston C.A. 9(Cal) 1990, 910 F.2d 652; Williams v. American Cyanamid D.N.J. 1996, 164 F.R.D. 615; Loustalet v. Refco Inc. C.D. Cal. 1993, 154 F.R.D. 243; Ladson v. Ultra East Parking Corp., S.D.N.Y. 1996, 164 F.R.D. 376; Upchurch v. Ustnet, Inc. D.Or. 1994, 158 F.R.D. 157; Miles v. Boeing Co. E.D.Pa. 1994, 154 F.R.D. 117; Burton Mechanical contractors, Inc. v. Foreman N.D.Ind. 1992, 148 F.R.D. 230. The decision of the District Court and U.S. Court of Appeals for the Third Circuit has established a new standard that one must be member of the bar in order to be afforded due process by the bench. The Petitioners contend that this standard is in conflict with the Constitution and forces them to accept injustice as inevitable fact of life.

The Petitioners also contend that their efforts to remedy serious injustice or enjoin arbitrary and unlawful government actions have failed because the inferior courts bared them from discovering the facts which could pass all the tests of the cases cited by the District Court and formed opinions without knowing all the facts. In the process they have implemented their own prejudices against pro-se Plaintiffs. It is a sad retreat for American justice and establishes a standard that justice can be bought through lawyers only. For the Petitioners, the will, the spirit, and a firm sense of self respect and self-worth have been suffocated The inferior courts have denied the petitioners the very attributes that are at the core of human dignity, freedom of will, and the capacity to choose between good and bad. If the Supreme Court of the United States decides to discard this petition, then the petitioners beg that the Court should add a new rule to the civil procedure that pro-se plaintiffs are not allowed in the U.S. Courts. This will eradicate disillusionment that "Equal Protection" and "Justice" is for all. Will it be a powerful message of hope and inspiration to those struggling for a better life?

There are gross errors in the opinion of the District Court in applying the case law as well as facts of this case and the U. S. Court of Appeals chose not to give this case justiciability. The orders of the courts amount to ordering the

Petitioners to subordinate their rights to the privileged class and accept the oppressive actions of the Township under color of law as the law of the Land. The rush to summary judgment by the District Court fell so far short of conforming to fundamental standards of procedure that it warrants constitutional condemnation in terms of lack of due process.

The Petitioners contend that the bombardment of only the petitioners with twenty-nine summonses for the same offence, under color of law is nothing but cruel and unusual punishment. Since the Petitioners were the only ones selected for this treatment, it is a gross constitutional violation of the Petitioners' rights. The Petitioners pray that the Supreme Court of the United States grants this petition to undo the injustice done by the inferior courts. It is crucial and important to recognize that each and every individual deserves justice irrespective of the class or national origin of the individual and the individual does not have to have the public or private resources by which lawyers can manipulate the procedural due process.

Respectfully Submitted,

Rajeshwar Singh Yadav

Rajeshwar Singh Yadav

Roopa Yadav

Roopa Yadav

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 97-5209

RAJESHWAR SINGH YADAV; ROOPA YADAV,
Appellants

v.

WEST WINDSOR TOWNSHIP

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 95-cv-00911)
District Judge: Hon. Anne E. Thompson

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 24, 1997

Before: SLOVITER, Chief Judge,
McKEE and SEITZ, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED and ORDERED that the judgment of the district court entered March 10, 1997 be and is hereby affirmed. Costs taxed against appellant.

By the Court,

Attest

Chief Judge

P. Douglas Sisk, Clerk
Dated: SEP. 30 1997

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

RAJESHWAR SINGH YADAV, et al.,	:	Civil No. 95-911 (AET)
Plaintiffs,	:	
v.	:	ORDER
WEST WINDSOR TOWNSHIP,	:	
Defendant.	:	
	:	

For the reasons set forth on the record on this date:

It is on this 10th day of March, 1997;

ORDERED that defendant West Windsor Township's motion for summary judgment be and hereby is **granted**; and it is further,

ORDERED that plaintiffs' motion for reconsideration of this Court's decision to allow the parties to file summary judgment motions be and hereby is **denied**; and it is further,

ORDERED that this case be **closed**.

ANNE E. THOMPSON, CHIEF JUDGE

ORIGINAL FILED

MARCH 10 1997

WILLIAM WALSH, CLERK

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RAJESHWAR SINGH YADAV, et al.,	:	Civil No.95-911(AET)
Plaintiffs,	:	
v.	:	OPINION
WEST WINDSOR TOWNSHIP,	:	
Defendant.	:	
	:	

THOMPSON. Chief Judge

This matter is before the Court on motion by Defendant West Windsor Township ("West Windsor") for summary judgment pursuant to Fed R. Civ. P. 56. Plaintiffs move the Court for reconsideration of its decision to allow the parties to file summary judgment motions. The Court decided these motions without oral argument in accordance with Fed.R.Civ.P.78. For the following reasons, defendant's motion will be granted and plaintiffs' motion will be denied.

I BACKGROUND

Plaintiffs filed this lawsuit on February 24, 1995, alleging that the defendant violated plaintiffs' rights based on racial/ethnic discrimination, selective enforcement and harassment surrounding the issuance of multiple municipal summonses.

The defendant West Windsor Township contends that the Township Health Department investigated plaintiffs' property at 376 North Post Road in response to a complaint that there was trash and debris" on the property. Def.Br. At 3. A West Windsor health official, Sharon Black ("Black")

investigated the property on February 9, 1993, and found that the plaintiffs' property had various piles of garbage,""brush, tree limbs, dead and dying trees," an abandandoned house "not adequately boarded up," and an unsecured well." Def.Br. At 3. Black later returned to plaintiffs' property to take photographs. West Windsor contends that Black left door tags at the property, advising Mr. Yadav to contact the Township. Mr. Yadav disputes this contention and argues that the sheet was not left at our door." Pl. Br. At 3. Mr. Yadav maintains that he took immediate action and boarded the areas of the house...put the displaced concrete cover of the well to secure it and removed all unusable material including glass from the property." Pl.Br.at3.

On February 10, 1993, Black issued a "Notice of Violation" to plaintiffs listing the alleged health code violations and the relevant Township ordinances. The Notice listed:

1. The presence of trash and debris, including discarded plastic quart oil containers, plastic containers of antifreeze, broken glass, metal scraps, a child's walker and miscellaneous garbage.
2. The existence of brush, obonoxios growth, tree limbs, dead and dying trees.
3. An abandoned house which is not adequately boarded up.
4. An abandoned well which is not adequately boarded up.
5. The abandoned house and well are required to be secured within 24 (twenty-four) hours of receipt of this notice.
6. The abandoned well must be sealed by a licensed well driller within 10 (ten) days of receipt of this notice.

West Windsor contends that Black visited he property again on February 16, 1993, and discuss the situation with Mr. Yadav. Black alleges that when she questioned Mr. Yadav about the condition of his property, he replied "[o]ne person's trash is another's treasure." Def. Edh. A. On that date, defendant contends that Mr. Yadav borbid Black from entering his property.

It is undisputed that Black issued three summonses to Mr. Yadav on February 26, 1993, for: (1) an abandoned well, (2) dead and dying trees and brush, and (3) trash and debris on the property. Black issued three additional summonses against Mr. Yadav for the same violation on March 1, 1993; according to the defendant. Black investigated the property for signs of abatement and finding none, decided to issue additional citations. Black

returned to the property on five subsequent occasions, issuing the same three summonses each time for the continued existence of an abandoned well, dead and dying trees and brush and trash and debris on the property. Def.Br. At 5-6. West Windsor argues that Black issued the additional citations since no abatement efforts had been taken to ratify the existing violations. Def.Br. At 6. Mr. Yadav disputes this contention and contends that Black noted on her activity report that the well was secured and the house boarded up. Pl.Br. At 7. Mr. Yadav also contends that although he had forbidden Black from entering the property, she did so on February 26, 1993 to take additional photographs.

Mr. Yadav states that West Windsor did not attempt to remain in contact with him or to assist him with abatement efforts. Rather, Mr. Yadav argues that the summonses issued by Black were "the result of selective enforcement by Township Officials due to Mr. Yadav's race and/or ethnicity and not due to innumerable health code violations that existed on his property." Pl.Br. At 9. Plaintiffs allege that the issuance of the summonses constitutes selective enforcement since "there is not a single example that any other resident was given more than one summons for the same offense." Pl. Br. At 9. Plaintiff contends that the Township issued similar summonses to three other residents since 1990 and that, at the date of their respective court appearances, only he had received additional summonses. Mr. Yadav further states that "almost 50% of all summonses issued by West Windsor Township since 1990 were issued to him. Pl. Br. At 11.

On March 11, 1993, the West Windsor Municipal Court found Mr. Yadav guilty on the twenty-one (21) summonses issued. On appeal to the Superior Court of New Jersey, Law Division, Mercer County, the Superior Court upheld three (3) of the twenty-one summonses given to Mr. Yadav. The Superior Court looked to a provision of the township ordinance which provided that "...each and every day in which a violation of any of the provisions of any chapter adopted by the Board of Health exists shall constitute a separate violation" for which additional summonses may be issued. Interpreting this provision, the Superior Court found that additional summonses may be issued only after the original summonses had been adjucated: the Court found "that while the statue clearly talks about a separate complaint for each violation, there is no true violation in the opinion of the Court in the legal sense until the Defendant has been convicted." Defendant

contends that the Superior Court found that health code violations existed on plaintiffs' property from February 26, 1993, until March 11, 1993.

Plaintiffs bring suit against West Windsor for violation of their constitutional rights under 42 U.S.C. § 1983. Plaintiffs argue that the Township issued multiple summonses to plaintiffs due to their race and/or ethnicity; plaintiffs further allege that West Windsor selectively enforced its ordinances, maliciously prosecuted plaintiffs and placed plaintiffs in involuntary servitude through the use or threatened use of physical or legal coercion.

II. Discussion

A court may enter summary judgment if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. FED R. CIV. P. 56; Celotex Corp. V. Catrett, 477 U.S. 317, 323 (1986). Once the moving party has satisfied this initial burden, the opposing party must establish that a genuine issue exists. Jersey Central Power & Light Co. V. Lacey Township, 772 F.2d 1103, 1109 (3rd Cir. 1985), cert. Denied 475 U.S. 1013 (1986). Not every issue of fact will be sufficient to defeat a motion for summary judgment; issues of fact are genuine "if the evidence is such that any reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby Inc. 477 U.S. 242, 248 (1986). Further, the opposing party cannot rest upon mere allegations; it must present actual evidence that creates a genuine issue of material fact. Id. At 249(citing First Bat'l Bank of Arizona v. Cities Services Co., 391 U.S. 253, 290 (1968)). The court must draw all reasonable inferences in the opposing party's favor. And must accept that party's evidence when considering the merits of the summary judgment motion. See Pollock v. American Tel. & Tel. Long Lines, 794 F.2d 860, 864 (3rd Cir. 1986).

As an initial matter, the Court finds that summary judgment is procedurally appropriate at this juncture. Plaintiffs argue that summary judgment should not be permitted as preparations for trial were already underway. While the deadline for submission of dispositive motions set by Magistrate Judge Wolfson has passed, it is undisputed that the discovery process extended well beyond the initial deadline. As discovery has only recently been completed, the Court finds that the defendant's motion for summary judgment is appropriate at this time.

In support of its motion for summary judgment, West Windsor argues that plaintiffs have failed to proffer any evidence demonstrating that the summonses were issued on the basis of race and/or ethnicity. Defendant points to the deposition of Mr.Yadav and argues that Mr. Yadav "could offer no proof of discrimination or selective enforcement." Def. Br. At 15. The Township further contends that Plaintiffs have presented no evidence in support of their allegations of discrimination. According to defendant, the Superior Court found that a factual basis existed for each summonses issued to Mr. Yadav for health code violations. The Township maintains that the doctrines of res judicata and collateral estoppel preclude further litigation as to the facts surrounding issuance of the summonses.

Plaintiffs have brought suit against defendant West Windsor under 42 U.S.C. § 1983 for violation of their constitutional rights. In relevant part, Section 1983 provides:

> Every person who, under color of any statue, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

"By its terms, of course, the statue creates no substantive rights; it mearly provides remedies for deprivations of rights established elsewhere." City of Oklahoma v. Tutle, 471 U.S. 808, 816 (1985). Thus, "[t]o establish a claim under 42 U.S.C. § 1983 [a plaintiff] must demonstrate a violation of a right secured by the Constitution and the laws of the United States [and] that the alleged deprivation was committed by a person acting under color of law."

Selective enforcement is not per se violation of the United States Constitution. Kosta v. Connolly, 709 F. Supp. 592, 595 (E.D.Pa. 1989); United States v. Ettorre, 387 F. Supp. 582, 588 (E.D.Pa. 1975); See Olyer v. Boles, 368 U.S. 448, 456 (1962). In order to succeed on a claim for selective enforcement, the plaintiffs must establish that: (1) the persons involved, compared with other similarly situated individuals, were selectively treated, and (2) the selective treatment was based on impermissible considerations such as race, religion, intent to inhibit the exercise of constitutional rights or bad faith intent to injure them. Kosta, 709 F. Supp. At 595; United States v.

Shober, 489 F. Sup. 393 (E.D.Pa. 1979).

In the instance case, plaintiffs have set fourth no evidence demonstrating that West Windsor issued multiple summonses against Mr. Yadav due to his race and/or ethnicity. To avoid summary judgment, plaintiffs must offer more than mere allegations of discrimination. It is not enough for Mr. Yadav to contend that issuance of multiple summonses was done on the basis of race or ethnicity, while the amount of evidence required to surmount a motion for summary judgment involving a claim of discrimination is not high, plaintiffs must offer more than a mere allegation that West Windsor acted on the basis of race or ethnicity.

Plaintiffs argue that West Windsor selectively enforced its municipal ordinances by issuing multiple summonses. However, plaintiffs have not established that they were "selectively treated" compared with other "similarly situated" individuals. Plaintiffs do not provide information on the race or ethnicity of the other three individuals to whom the Township issued summonses; nor do plaintiffs explain whether the other individuals had undertaken abatement efforts. To survive summary judgment on this claim, plaintiffs must show both that they were selectively treated compared to other similarly situated and that their selective treatment was based upon impermissible considerations. As plaintiffs have failed to demonstrate the existence of either of these elements of selective enforcement, the Court finds that defendant is entitled to summary judgment on this claim.

Plaintiffs have similarly failed to set forth a viable claim for malicious prosecution. To bring a civil action under § 1983 for malicious prosecution, the plaintiff must demonstrate that: (1) the defendant initiated a criminal proceeding, (2) which ended in plaintiffs' favor, (3) the proceeding was initiated without probable cause, and (4) the defendant acted maliciously or for a purpose other than bringing the criminal defendant to justice. Kosta, 709 F. Supp. At 595; Lee v. Mihalich, 847 F.2d 66 (3rd Cir. 1988). Here, it is evident that West Windsor did not initiate criminal proceedings against Mr. Yadav which ended in his favor and which were initiated without probable cause. As such, plaintiffs have failed to state a claim for malicious prosecution.

Plaintiffs' claim against West Windsor for involuntary servitude must also fail. The Thirteenth Amendment of the United States Constitution empowers Congress to pass all laws necessary and proper for the abolition of

badges and incidents of slavery. In relevant part, the Thirteenth Amendment provides:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to this jurisdiction.

It is well established that the Thirteenth Amendment "is not mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States. "Memphis v. Greeen, 451 U.S. 100, 120 (1980) (citing to civil rights cases, 109 U.S. 3, 20 (1883)). In this case, plaintiffs have failed to set forth any evidence to demonstrate that they were placed in involuntary servitude due to the constraints imposed upon them by West Windsor.

III. CONCLUSION

For the foregoing reasons, defendant West Windsor's motion for summary judgment is granted and plaintiffs' motion for reconsideration of the Court's decision to permit submission of summary judgment motions is denied. As appropriate order will be entered.

Dated: 3-10-97